IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL REVISION NO.1238 OF 2007

DATE OF DECISION: SEPTEMBER 12, 2007

V.P.Dhingra

.....Petitioner

VERSUS

C.B.I., Chandigarh.

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. P. S. Hundal &
Mr. Abhishek Sethi, Advocates,
for the petitioner.

Mr. Rajan Gupta, Advocate,
for the respondent.

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RANJIT SINGH, J.

The petitioner, working as Superintending Engineer in the Electricity Department of Union Territory, Chandigarh, and accused of an offence under Sections 7, 30(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1989 has filed this revision petition, impugning the order passed by the Special Judge, C.B.I., Chandigarh, dismissing his application seeking his acquittal on the ground that sanction granted for his prosecution is invalid.

The petitioner, who is working as Superintending Engineer with effect from 1.8.2005 is alleged to have demanded and paid illegal gratification of Rs.20,000/- for allowing the complainant the use of KEIL make un-approved controller in the work being undertaken by a private contractor at Airport Chowk, Chandigarh. Information being shared with the C.B.I., a trap was laid and the petitioner was caught red handed while demanding and accepting bribe of Rs.20,000/- from Subhash Bajaj, complainant, in the presence of independent witnesses. After completion of investigation and on receipt of sanction for prosecution, charge-sheet dated 30.11.2006 is filed in the Court of Special Judge, Chandigarh, against the petitioner. The petitioner moved an application before the Special Judge on 15.5.2007 for his acquittal on the ground that sanction granted in this case for prosecution of the petitioner is invalid for various reasons.

Though starting with plea of invalid sanction, the counsel ultimately confined his submission only to invalid authentication of the order granting sanction. It is pleaded that the order granting sanction is issued by Secretary, Engineering on behalf of the Administration, U.T., Chandigarh, whereas the petitioner was working under the control of Home Secretary and not the Secretary, Engineering and, thus, the order is not valid. Ofcourse, this submission is strongly opposed by the counsel appearing for respondent CBI.

To substantiate submission, it is urged that the petitioner was working under the control of Home Secretary and the order granting sanction, as such, could validly has been authenticated,

legally by Secretary Home, U.T. and not by Secretary Engineering, as has been done. Referring to Articles 77 and 166 of the Constitution, it is pleaded that all executive actions of the Government of India are to be expressed in the name of President or Governor in cases of Union of India and State Government respectively. It is further pointed out that rules are to be formulated for convenient transaction of the business of the Government and for allocation amongst Ministers for the said business. By referring to Article 239 of the Constitution of India, it is urged that President may appoint Governor of the State as the Administrator of the adjoining Union Territory and where Governor is so appointed, he shall exercise his functions as an Administrator independently of his council of Ministers. Section 3 of the Chandigarh (Delegation of Powers) Act, 1987, says that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge under any law in force in Union Territory of Chandigarh may be exercised or discharged also by such officer or other authority as may be specified in this behalf by the Central Government or the Administrator by notification in the official gazette.

It may be noticed that notification dated 25.2.1988 is issued in terms of the powers conferred by Section 3 referred to above. By this notification, the Administrator, U.T., Chandigarh, has been pleased to direct that any power, authority or jurisdiction or any duty which the Administrator may exercise or discharge by or under the provisions of any law, rules or regulations as are applicable in the Union Territory, Chandigarh, on the date of this notification shall be exercised or discharged by the Advisor to the Administrator except in

cases or class of cases as mentioned in the schedule annexed thereto. Mr.Hundal, by referring to the schedule, would say that except for the cases or class of cases referred to in the schedule all other cases are not to be submitted to the Administrator for final orders. As per the Schedule, such cases or class of cases as the Administrator may consider necessary or such other cases where his orders are necessarily to be obtained under statute, for instance granting sanction to the launching of prosecution under Section 196 Cr.P.C. or any other criminal law are to be submitted to Administration for final orders. Thus, the matter relating to grant of sanction would necessarily have to be dealt with by the Administrator. It is on this basis urged that as per the rules of business, the concerned Secretary alone would be entitled to authenticate the order granting sanction on behalf of the Administrator. Plea is that Secretary working in a particular Department can authenticate any order passed by and in the name of Administrator concerning that Department only, for example, Finance Secretary, according to the counsel, would be competent to authenticate orders passed on behalf of the Administrator concerning the Finance Department and so would be the case of Secretary, Home Department, who could authenticate the orders concerning his Department alone. Mr.Hundal then refer to the promotion order passed in respect of the petitioner and the orders placing petitioner under suspension, which were by Home Secretary, Chandigarh Administration, to say that the matter relating to grant of sanction could have been validly authenticated by Secretary, Home and not by Secretary Engineering. Plea accordingly is that there is no valid

sanction and hence, the prosecution of the petitioner in progress must end in his acquittal.

Initially, the order granting the sanction was not placed on record. The same, however, was placed on record when so directed by the Court. It would be appropriate to notice that order granting sanction is passed/authenticated in the following manner, which reads:-

> "By order and in the name of the
> Administrator, Union Territory,
> Chandigarh.
>
> Sd/-S.K.Sandhu,
> Secretary Engineering,
> Engineering Department,
> Chandigarh Administration
> Dated 30.11.2006"

It is, thus, clear that this order has been passed in the name of Administrator and it can not be termed as an order passed by Secretary, Engineering as is being construed. This aspect ultimately was not seriously disputed. Concise plea is that Secretary, Engineering, could not competently authenticate the order concerning grant of sanction and this could only be done by Secretary, Home on behalf of the Administrator, Chandigarh. In his support, Mr.Hundal referred to the case of ***Shingara Singh Gujjar Singh Vs. The State of Punjab,*** 1971 Cri.L.J. In this case, this Court held that an order passed by a Secretary to Government, who is authorised by the standing order in accordance with the rules or business framed by the Governor under clauses (2) and (3) of Article

166 and if expressed in the name of Governor, as required by Clause (1) of Article 166 and is further authenticated in accordance with rules of business, then this order will be considered to be an order of the State Government. It is not understood as to how the judgment in the case of Shingara Singh (supra) would help the case of the petitioner. As held in this case, Article 154 (1) of the Constitution, provides that the executive powers of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution. Reference is then made to Article 163 of the Constitution to say that there shall be a Council of Ministers with the Chief Minister at the head to aid and advice the Governor in exercise of his functions. As per Article 166(1), all executive action of the Government of State shall be expressed to be taken in the name of the Governor. As per Article 166(3), Governor is to make rules for more convenient transaction of the business of the Government of the State and for allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion. The combined effect of all these provisions was considered by the Supreme Court in ***Gullapalli Nageswara Rao Vs. Andhra Pradesh State Road Transport Corporation,*** AIR 1959 SC 308, which is referred to in Shingara Singh's case (supra). It is held as under in this case:-

> "The effect of the aforesaid provisions may be stated thus: A State Government means the Governor; the executive power of the State vests in the Governor; it is

exercised by him directly or by officers subordinate to him in accordance with the provisions of the Constitution; the Ministers headed by the Chief Minister advise him in the exercise of his functions. The Governor made rules enabling the Minister in charge of particular department to dispose of cases before him and also authorising him, by means of standing orders, to give such directions as he thinks fit for the disposal of the cases in the department. Pursuant to the rule, the record discloses, the Chief Minister, who was in charge of Transport, had made an order directing the Secretary to Government, Home Department, to hear the objections filed against the scheme proposed by the State Transport Authority."

After referring to a case of ***Manmohan Singh Johal Vs. The State,*** AIR 1969 Punj. 225, this Hon'ble Court in Shingara Singh's case (supra) held that :-

"In view of the above it is clear that if the order is passed by the Secretary to Government who was authorised by a standing order in accordance with the rules of business framed by the Governor under Cls. (2) and (3) of Art. 166 and is expressed in the name of the Governor as required by Cl.(1) of Article 166 and is further authenticated in accordance with the rules of business, then this order would be considered to be the order of the State Government. I, therefore, find no merit in the first argument raised by Mr.Chawla."

It is, thus, clear that where order is passed by Secretary to the Government, who is authorised by the standing order in accordance with the rules or business and is expressed on the name of the competent authority, then the order is considered to be the order of the authority/the Government. It is not disputed in the present case that the competent authority to pass the order in this case is the Administrator, Union Territory, Chandigarh. The question required to be seen is whether it is validly authenticated or not? The case of Shingara Singh (supra) would not be of any assistance as in the said case the order has been authenticated in terms of the rules of business formulated in the case. It is a conceded position in the present case that no rules of business have been formulated in the Union Territory of Chandigarh. Mr.Hundal would place reliance on a letter No.IH/7-92-21999 dated 9.12.1992 to say that the case of appointment/deputation of the senior officer is to be handled and processed in the present Department (in Home-I) Branch of Chandigarh. How, a letter, regulating the appointment/deputation would be a substitute for rules of business, can not be understood. This letter even would not be an authority for any officer or department to discharge duties of an Administrator. Even as per Chandigarh (Delegation of Powers) Act, officer or authority is required to be specified in the official gazette.

On the contrary, Mr.Rajan Gupta, appearing for C.B.I., would refer to a notification dated 1.11.1966 issued by the Government of India in exercise of powers under clause (1) of Article 239 of the Constitution, whereby it is specifically provided that all orders and other instruments made and executed in the name of

Chief Commissioner of the Union Territory of Chandigarh shall be authenticated by the signature of a Secretary, a Deputy and Under Secretary, an Assistant Secretary in any of the Departments of the Chandigarh Administration. The notification is reproduced here as under:-

> "GSR-1675-In exercise of the powers conferred by clause (1) of Article 239 of the Constitution, the President hereby directs that all orders and other instruments made and executed in the name of Chief Commissioner of the Union Territory of Chandigarh shall be authenticated by the signature of a Secretary, a Deputy and Under Secretary, an Assistant Secretary in any of the Departments of the Chandigarh Administration."

In addition, Mr.Rajan Gupta would also refer to Section 19 of the Prevention of Corruption Act (hereinafter referred to as "the Act"), sub-clause (3)(a) of which clearly says that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby. He would further refer to sub-clause (4) of Section 19, which reads:-

> "In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the

objection could and should have been raised at any earlier stage in the proceedings."

The explanation under the section clearly says that for the purpose of this Section error includes competency of the authority to grant sanction. Explanation B may also be relevant in this regard, which says that a sanction required for prosecution includes reference to any requirement that the prosecution shall be, at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature. From this, Mr.Gupta, learned counsel, would say that the objection raised by the petitioner in regard to the authentication of the sanction is misconceived in view of the fact that the sanction could validly be authenticated by any Secretary in view of notification reproduced above which is not superseded in any manner and in the absence of any rules of business would govern the field. Even in terms of clear provisions of law, the issue relating to error of sanction has completely been rendered insignificant to have any effect on the trial or proceedings under the Act. A feeble attempt by Mr.Hundal to get out of the rigors of notification, on the ground that this would not apply now as Union Territory is administered by the Governor, Punjab, as Administrator, aided by the Advisor etc., and not by Chief Commissioner, in my view, is without much weight. This notification authorises any Secretary working in the Union Territory to authenticate the order on behalf of Chief Commissioner, which powers are now available with the Administrator. It is otherwise also a question of only authenticating the grant of sanction, which is by a competent authority. Once it is not disputed that the Administrator, in

his capacity, was competent to grant sanction and which has been authenticated by a Secretary in the Engineering Department, in which the petitioner was serving, it is not understood as to what prejudice would it cause to the case of the petitioner. As already noted, Section 3 of Chandigarh (Delegation of Powers) Act, clearly provides that the authority or jurisdiction or any duty, which is to be exercised by the Administrator, may be exercised or discharged by such an officer or other authority as may be specified in this behalf by the Central Government or the Administrator by notification in the official gazette. Notification dated 1.11.2006 referred to by Mr.Gupta, as such, would be relevant as it has not been superseded in any manner. As per this notification, any Secretary, Deputy Secretary, Under Secretary and Assistant Secretary can authenticate the orders. The submission of Mr.Hundal that Secretary, Home, U.T., would be only competent to authenticate granting sanction on behalf of the Administrator on the ground that the order of suspension etc. was passed by the Home Secretary, can not be accepted as a valid ground to construe that the sanction can be authenticated alone by Secretary, Home, U.T. In ***Sunderlal Shivana Vs. State of Madhya Pradesh,*** AIR 1988 Madhya Pradesh 70, Full Bench of the High Court held that sanction given by Law and Legislative Affairs Department for prosecution of Naib Tehsildar is a valid sanction, although appointing and removing authority was Revenue Department as rules of business authorise the Law and Legislative Affairs to grant sanction. Thus, the Department or a Secretary, who is dealing with the appointment or suspension etc., would not be the

sole criteria to judge the competency of such Secretary to authenticate sanction. This has to be seen in terms of the orders regulating the same. Only relevant material in this regard is the notification of 1966, which has authorised any Secretary in the Department to authenticate the order on behalf of the Chief Commissioner, which has not been superseded and as such, would continue to be relevant in this regard. Otherwise also, the learned counsel for the petitioner has not been able to show any document, which could indicate that the powers to authenticate orders in respect of Engineering Department is given to Secretary Home.

Article 166 of the Constitution, which regulates the conduct of Government business, is as under:-

> "166. Conduct of business of the Government of a State.-
>
> (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.
>
> (2)Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
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> (3) The Governor shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or

under this Constitution required to act in his discretion."

It may be seen that clause (1) of Article 166 does not prescribe how an executive action of the Government is to be performed. It only prescribes the mode in which such act is to be expressed. Clause (2) lays down the manner in which the order is to be authenticated. Clause (1) has been held to be directory and not mandatory in character and, thus, failure to comply with same does not nullify the order but takes away the constitutional immunity from proof. Where order is signed by Secretary by order of Governor, it was held to be a substantial compliance of the clause.

It is seen that under clause (2), order executed in the name of Governor can not be called in question on the ground that it is not an order made or executed by the Governor. It is the signature of the Secretary duly authorised which signifies the consent of Governor. The Governor is to make rules for more convenient transaction of the business of the Government of the State or for allocation among ministers of the said business. Rules of business again may empower the minister-in-charge of a subject to make standing order regarding disposal of cases under his charge and by doing so a Minister may direct that except in regard to specified matters, all others be disposed of by a Secretary. Except where the rules of business specifically provide that arrangement be made only by written standing order, it is competent for Minister to do this by oral instructions. The notification issued by the Administrator, Union Territory, Chandigarh, referred to in the fore-going paras of this order would show that cases of grant of sanction are to be dealt with by the Administrator. Indeed, in ***Godavari Vs. State of Maharashtra,*** AIR

1964 SC 1128, it was held as under:-

> "Allocation of Business under Art. 166(3) of the Constitution is not made with reference to particular laws which may be in force at the time of allocation is made. It is made with reference to the three lists of the Seventh Schedule to the Constitution, for the executive power of the Centre and the State together extends to matters with respect to which Parliament and the Legislature of a State may make laws."

Thus, it is the business allocation rules, which basically would govern the exercise of power and authentication of the order in this regard. It is clear that sanction in this case is given by the Administrator. No provision is pointed out which may regulate the authentication of sanction so granted by the Secretary Home in respect of employees respecting any particular Department, to which they may belong. In fact, in the case ***Sunderlal Shivana (supra)***, Full Bench of Madhya Pradesh High Court was concerned with the precise question i.e. whether the sanction issued in the name of the Governor, irrespective of the fact of issue of the sanction by a particular department, could be a valid sanction and any objection as to the validity of such sanction, raised under sub-sec. (2) of Section 166 will be meritless. Reference was made to the decision of Supreme Court in the case of ***Beant Singh Vs. State of Punjab,*** 1966 Cri. App R (SC) 356, wherein it was held that sanction signed by the Secretary of the State Government, stating that it is by order of the State and reciting that the Governor of the State of Punjab has

gone through the record of the case, cannot be said to be invalid on the ground that the papers regarding sanction did not at any time go further than the Secretary, who signed it. In view of the presumption that may arise under clause (2) of Article 166 of the Constitution that the order expressed in the name of Governor and duly authenticated according to the rules of business shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor, can not also be lost sight of. Such an order perhaps may be open to challenge when it is alleged that person who made the order on behalf of the Governor had no authority to take a decision on behalf of the Governor under the relevant rules. Even this ground will arise only if the order is not authenticated as required under clause (2) of Article 166 but has been issued by some authority on behalf of the Governor.

In the instant case, the order has been authenticated by Secretary, Engineering. There is nothing to show that he is not authorised to authenticate such order. Rather, indication, if any, is that any Secretary can authenticate order of this nature. This order has been passed by the Administrator. Under such circumstances, clause (2) of Article 166 may also disentitle the petitioner, to raise the present challenge. The sanction given by the Administrator, duly authenticated by the Secretary, Engineering Department, as such, is a valid sanction. Nothing is pointed out to show that Secretary Engineer is not authorised to authenticate the order in respect of employee working in his department especially in the background that the notification, authorising any Secretary to authenticate sanction on behalf of the Chief Commissioner, which has not been

changed or superseded in any manner.

There is no merit in the revision petition and the same is accordingly dismissed.

September 12, 2007 **(RANJIT SINGH)**
khurmi **JUDGE**